EDITOR'S NOTE

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Supreme Court, U.S.
FILED
FEB 4 1987
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

JULIUS JONAS JODELE

v.

COMMISSIONER OF INTERNAL REVENUE

ON
PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

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PETITIONER PRO SE

31 pp

Questions for Review

I

Can Petitioner's, Jodele's, fifth amendment right to be heard be satisfied by summary proceedings (without opportunity for oral argument) when Jodele is a Lithuanian national American with English as his second language and is a layman who has not had any formal training in law so he does not know how to draft formal briefs like lawyers can?

II

Is not Jodele's right to the courts being restricted by only allowing him to appear by written pleadings only?

III

Is not a judgement to pay attorneys' fees a form of double taxation when the attorneys are already on a salary payed by the people of the United States through taxes?

Table of Contents

Questions for Review	1
Table of Citations	iii
Opinions Below	1
Jurisdiction	2
Questions for Review	3
Statement of the Case and Facts	4
Argument	18
Reason for Granting Writ	18
Conclusion	20
Certificate of Service	22
Appendix	23

Table of Citations

Cases

Anti-Fascist Committee v. McGrath 16
341 U.S. 123 (1951)
Armstrong v. Manzo 15
380 U.S. 545 (1965)
Brescie Const. Co. v. Walard Cost. Co. 12
246 N.Y.S. 862
Crandall v. Nevada 7
6 Wall 35, 46
Doyle v. Mitchell Bros. Co. 8,9
247 U.S. 179
Edward v. Keith 8
231 Fed. Rep. 110
Eisner v. Macomber 8
252 U.S. 189 (1920)
Goldberg v. Kelly 15
397 U.S. 254 (1970)
Haines v. Kerner 12,15,17
404 U.S. 519 (1972)
McCullock v. Maryland 7
4 Wheaton 316
Miranda v. Arizona 18
384 U.S. 436 (1966)
Shaffer v. Carter 8
252 U.S. 37 (1920)
Stratton's Independence v. Howbert 8
231 U.S. 399

Statutes

26 U.S.C. § 61 6
26 U.S.C. § 3401(a) 10
26 U.S.C. § 6051 10
26 U.S.C. § 6211 6,10
26 U.S.C. § 6214 5,10
26 U.S.C. § 6673 5

28 U.S.C. § 1254(1) 2
28 U.S.C. § 2101(c) 2

To the Honorable William H. Rehnquist, Chief Justice, and associate Justices of the Supreme Court of the United States.

Julius Jonas Jodele, Petitioner *Pro Se*, prays that this petition for certiorari is ganted to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above entitled case on August 5, 1986 and denial of rehearing *en banc* entered on November 6, 1986

Opinions Below

The *per curiam* affirmed judgment of the United States Court of Appeals for the Ninth Circuit whose judgment is herein sought to be reviewed and is unreported.

The *per curiam* order of the United States Court of Appeals for the Ninth Circuit denying Jodele's motion for rehearing and rejecting the suggestion for rehearing *en banc* is printed in Appendix.

Jurisdiction

The United States Court of Appeals for the Ninth Circuit filed a Memorandum on August 5, 1986. Jodele timely (within 14 days pursuant to Federal Appellate Procedure Rule 40) filed a petition for rehearing en banc on August 19, 1986. Jodele's petition for rehearing was denied and his suggestion for rehearing en banc was rejected by the United States Court of Appeals for the Ninth Circuit's Order filed on November 6, 1986. This petition is timely filed within 90 days of denial of rehearing en banc persuant to Supreme Court Rule 20.2 and 28 U.S.C. § 2101 (c). This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (1) providing for review after rendition of judgment.

Questions for Review

I

Can Petitioner's, Jodele's, fifth amendment right to be heard be satisfied by summary proceedings (without opportunity for oral argument) when Jodele is a Lithuanian national American with English as his second language and is a layman who has not had any formal training in law so he does not know how to draft formal briefs like lawyers can?

II

Is not Jodele's right to the courts being restricted by only allowing him to appear by written pleadings only?

III

Is not a judgement to pay attorneys' fees a form of double taxation when the attorneys are already on a salary payed by the people of the United States through taxes?

Statement of the Case and Facts

Jodele received a notice of deficiency for the tax years 1980, 1981 and 1982 from the Internal Revenue Service dated March 26, 1985. On the face of the notice was stated that "If you want to contest this deficiency in court...., you have 90 days from the above mailing date of this letter to file a petition with the United States Tax Court for a redetermination of the deficiency."

On June 20, 1985, Jodele filed a petition, a request for designation of trial at Los Angeles, CA and a request for a jury trial.

On June 26, 1985, Jodele's request for designation of trial at Los Angeles, CA was granted but never materialized.

On July 2, 1985, Jodele's request for a jury trial was summarily denied.

On Aug 12, 1985, Motion for assessment of damages under I.R.C. § 6673 and Motion to dismiss for failure to state a claim upon which relief can be granted were filed on behalf of the Commissioner along with memorandum in support thereof.

Objections to the Respondent's motions were due on September 2, 1985. September 2, 1985 was a Monday. The first Mondays in Septembers are legal holidays, Labor Days, as was September 2, 1985. The Tax Court was closed that day so Jodele's objections to Respondent's motions were filed on September 3, 1985, the next working day.

On September 3, 1985 Jodele also filed a motion to dismiss for lack of jurisdiction because 26 U.S.C. § 6214 is very specific on the types of determinations the Tax Court can make.

> "[T]he Tax Court shall have jurisdiction to redetermine the correct amount of the deficiency....and to determine whether any additional amount, or addition to the tax should be assessed"

And 26 U.S.C. § 6211 specificaly defines what constitutes a deficiency -

> "[T]he term "deficiency" means the amount by which the tax imposed by subtitle A or B, or chapter 41, 42, 43, 44, or 45".

Subtitle A is Income Taxes and 26 U.S.C. § 61 is in chapter 1 of subtital A which quotes:

> "[G]ross income means all income from whatever source derived, including.... the following items: (1) Compensation for services...."

Emphasis added to the word "from" because the word "by" was not used. Jodele's wage was the compensation for services and no income was derived form the compensation. Had the word "by" been used where "from" is used in § 61, then there would be no

question that the Internal Revenue Code considers the basic compensation as taxable income. But as worded now, the basic wage must be converted into taxable income. This interpretation is consistent with 48 Am Jur 2d § 2 Constitutional protection of right to work.

> "The right to labor and to its protection from unlawful interference is a constitutional as well as a common-law right. Every man has a natural right to the fruits of his own industry.
>
> Labor is deemed to be property, especially within the meaning of constitutional guaranties. Thus, the right to acquire property includes the right to acquire property by labor. The right to earn wages is just as much property and within the protection of the due process clause of the Fourteenth Amendment to the Federal Constitution as earned wages."

But if the government has the power to tax something, then the government has the power to destroy it. As was quoted in **McCullock v. Maryland** and in **Crandall v. Nevada**-"That the power to tax involves the

power to destroy." Then, if the govenment can destroy Jodele's wages, then Jodele couldn't have a right to them; The government would have the right to Jodele's wages and then we would be a communistic country instead of a strong democracy we once had. And consistent with **Edward v. Keith**, 231 Fed Rep 110 were was quoted, "One does not derive income by rendering services and charging for them." This Court said in **Shaffer v. Carter** that what constitutes as taxable income "resolves itself into a mere question of definitions". A question that this Court answered very plainly in **Eisner v. Macomber;**

> "[W]e find little to add to the succinct definition adopted in two casses arising under the Corporation Tax Act of 1909 (**Stratton's Independence v. Howbert**, 231 U.S. 399, 415; **Doyle v. Mitchell' Bros. Co.**, 247 U.S. 179, 185)-"Income may be defined as the gain derived from capital, from labor, or from both combined," provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in

the **Doyle Case** (pp. 183, 185).

> ....The Government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word "gain," which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived. "**Derived-from-capital**";-"the **gain-derived-from-capital**," etc. Here we have the essential matter: **not** a gain **accruing to** capital, not a **growth** or **increment** of value **in** the investment; but a gain, a profit, something of exchangeable value **proceeding from** the property, **severed from** the capital however invested or employed, and **coming in**, being "**derived**," that is, **received** or **drawn by** the recipient (the taxpayer) for his **separate** use, benefit and disposal;-**that** is income derived from property. Nothing else answers the description."

With this understanding of income, Jodele claims his wages are not. So the question in Tax Court becomes-Has Jodele's wages been converted into taxable income and how? This question the Tax Court has no jurisdiction to answer. The Tax Court can only **redetermine** the deficiency, or tax, on an established income and not an original determination on what is or isn't

income (see 26 U.S.C. § 6214).

Since this case never went to trial, it is assumed that the Commissioner is using a Form W-2 as proof of income. But the Form W-2 has irrelevant information on it for this case. What is on Form W-2 is defined in 26 U.S.C. § 6051;

> **"Receipts for employees**
>
> (a) **Requirement.**-.....a written statement showing the following:
>
> (3) the total amount of **wages**[1] as defined in section 3401(a),"

Since section 3401(a) is in chapter 24 of subtitle C, and the Tax Court can only make determinations in subtitle A or B, or chapter 41, 42, 43, 44 or 45 per 26 U.S.C. § 6211, the Tax Court can not use the information on Form W-2 to determine a deficiency because what is in subtitle C, has

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1. Emphasis added to the word "wages" because the word "income" was not used. Again affirming Jodele's contention that his wages are not income.

no relevance in subtitals A, B or D of the Internal Revenue Code. The Tax Court does not have the jurisdiction to accept a Form W-2 because all of the information on it is under subtital C!

On September 4, 1986, Jodele filed an objection to the Commissioner's motion for damages. The Commissioner alledged that Jodele's primary purpose for these proceedings was for delay.

On October 4, 1985, the Tax Court:

(1) summarily approved and adopted a memorandum sur order of the Special Trial Judge;

(2) summarily granted respondent's motion to dismiss for failure to state a claim upon which relief can be granted;

(3) summarily denied petitioner's motion to dismiss for lack of jurisdiction;

(4) summarily decided that there are deficiencies in petitioner's Federal income

tax and additions to tax; and

(5) summarily awarded damages to the United States in the amout of $5,000 pursuant to section 6673.

The Tax Court erred in adopting the memorandum sur order because this order has made findings of fact and conclusions of law on a summary proceeding. This is in direct violation of the New York Supreme Court's opinion in **Brescie Const. Co. v. Walard Const. Co.**, 264 N.Y.S.862, 238 App. Div. 360.

The Tax Court erred in granting Commissioner's motion to dismiss a lay pro se's petition for failure to state a claim upon which relief could be granted because this is in direct violation of this Court's opinion in **Haines v. Kerner**, 404 U.S. 519.

The Tax Court erred in summarily denying Jodele's motion to dismiss for lack of ju-

risdiction because the Tax Court only has jurisdiction to redetermine a deficiency and not make an original determination of what constitutes taxable income. Also the Commissioner has no relevant evidence to believe that Jodele had enough taxable income to issue a notice of deficiency which the Tax Court has no jurisdiction to determine either.

The Tax Court erred in summarily finding that there are deficiencies in Jodele's Federal income tax because there was no evidence entered to suggest that Jodele had converted his wage into taxable income. With no income, there can not possibly be a deficiency.

The Tax Court erred in summarily awarding damages to the United States in the amount of $5,000, because Jodele's primary purposes for instigating these proceedings are to resolve these questions and issues

of laws and rights and not primarily for delay. Somehow from a lay pro se's briefs, it was established by summary proceedings that Jodele instituted court proceedings primarily for delay.

The Tax Court erred in summarily dismissing this case without complying with Jodele's right to be heard. Although Jodele was borne in Los Angeles, CA, Jodele was raised by his Lithuanian national parents. Just like a lot of other Americans, English is his second language. Jodele doesn't like to write and therefore does not write well, but from necessity has been improving. By living most of his life in the United States, Jodele has learned the English language and can understand and speak it very well for a layman. By only allowing him to present his cases in writing, effectively denies him his right to be heard. The word used is

"heard" and not "read". By being forced to compete with a staff of trained lawyers in writing only, Jodele mut be able to draft formal briefs just like lawyers do. But this Court said in **Haines v. Kerner**, 404 U.S. 519, that lay pro ses should not be held to the same stringent standards as lawyers are. A limitation of written appearances only so severely handicaps Jodele's effectivity in the courts that it denys Jodele an opportunity for a meaningful hearing in a meaningful manner. This is against this Court's opinion in **Armstrong v. Manzo**. These summary proceedings also denied Jodele an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally- against this Court's opinion in **Goldberg v. Kelly**.

> [T]he right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardship of a

criminal conviction, is a principle basic to our society."

This Court made this quote in **Anti-Fascist Committee v. McGrath**. Jodele will suffer a grievous los of almost $50,000 if this Court chooses not to grant Jodele certiorari. This is more wage than Jodele has been able to earn in 1980 and 1981 combined!

This Court has repeatedly and consistently used the word "heard" and not the word "read" to fulfill the Constitutional requirement of due process of law.

On appeal to the United States Court of Appeals for the Ninth Circuit, the Court summarily affirmed the Tax Court's summary judgment and imposed attorneys' fees upon Jodele. The Ninth Circuit baldly stated that, "Thes is no constitutional right to oral argument."

But there is a constitutional right to be heard, not to be read. And in Jodele's case, he was so severely handicapped in written proceedings that his right to be heard can not have been complied with, without an oral presentation.

Jodele pointed out to the Ninth Circuit, in his petition for rehearing en banc, that whatever the Commissioner claimes can not be presumed correct unless a minimal evidenciary foundation is laid showing that Jodele's wages have been converted into income. Just because Jodele was waiting to present his case to the court in Los Angeles, (as has been granted by the Tax Court in Washington) is no reason to impose sanctions against Jodele and summarily dismiss his case for failure to state a claim upon which relief could be granted. See **Haines v. Kerner**, 404 U.S. 519.

Argument

Jodele may not be able to artfully plead his case, but he has very substantial issues of law to settle and is entitled to an opportunity to offer proof. If these proceedings keep getting summarily dismissed, Jodele will be condemned to suffer a grievous loss; not for being proved wrong but for not being as skilled as a lawyer is in drafting formal pleadings.

Reason for Granting Writ

This Court has from time to time took on the task of delineating, in meaningful language, the manner in which the constitutional rights of the individual could be protected. Probaly most recently against overzealous police practices in **Miranda v. Arizona**. Supreme Court Justice William O. Douglas once said that our Bill of Rights curb all three branches of government. It subjects all departments of

government to a rule of law and sets boundaries beyond which no official may go. It emphasizes that in this country man walks with dignity and without fear, that he need not grovel before an all powerful government. But today, the I.R.S. has usurped so much power that it has the lay public groveling at their feet. This Court should delineate similar guidelines for the I.R.S., in conjunction with the Tax Court, the manner in which the constitutional rights of the individual could be protected from the overzealous I.R.S. practices. Jodele understands that the I.R.S. needs power in order to perform its function, but to deprive individuals their rights as a normal course of buisness breeds contempt for the I.R.S. and its laws. The chances of an individual comming in contact with the I.R.S. are much greater than one being confronted by a police officer.

Conclusion

Jodele was denied an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally at a meaningful time and in a meaningful manner, and therefore, has been denied his constitutional right to due process of law.

This Court should determine whether imposing attorneys' fees is a form of double taxation when they are imposed on a private citizen and the attorneys are employees of the United States. The attorneys already draw a salary that is payed by the taxpayers, including Jodele.

Wherefore, the petitioner asks this Court that, for all the foregoing reasons, the petition for writ of certiorari be granted.

Respectfully submitted,

Julius Jonas Jodele

State of California
County of Santa Clara

Sworn and subscribed to me this 2nd day of February, 1987, and before me personally appeared Julius Jonas Jodele to me well known and known to me to be the person who executed this document.

Notary Public

OFFICIAL SEAL
TERRANCE R MAHURIN
NOTARY PUBLIC-CALIFORNIA
SANTA CLARA COUNTY
MY COMM. EXP. NOV. 12, 1990

My Commission Expires:

Certificate of Service

It is hereby certified that service of a true and correct copy of this petition has been made on the Attorney for the Appellee by mailing a copy thereof on this 3rd day of February, 1987, in an envelope, with postage prepaid, properly addressed to him as follows:

Department of Justice
Tax Division
P.O.Box 502
Washington, D.C. 20044-4502

Julius Jonas Jodele

State of California
County of Santa Clara

Sworn and subscribed to me this 2nd day of February, 1987, and before me personally appeared Julius Jonas Jodele to me well known and known to me to be the person who executed this document.

Notary Public

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NOTARY PUBLIC-CALIFORNIA
SANTA CLARA COUNTY
MY COMM. EXP. NOV. 12, 1990

My Commission Expires:

Appendix

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

August 5, 1986

Julius Jonas Jodele, Petitioner-Appellant,	)	
	)	No. 85-7718
v.	)	
	)	MEMORANDUM*
Commissioner of Inrenal Revenue, Respondent-Appellee.	)	

Petition to Review a Decision of the United States Tax Court

Submitted July 23, 1986**

Before: SNEED, ALARCON, and NOONAN, Cicuit Judges.

Per Curiam.

Affirmed.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

November 6, 1986

Julius Jonas Jodele, Petitioner-Appellant,	)	
	)	No. 85-7718
v.	)	
	)	ORDER
Commissioner of Inrenal Revenue, Respondent-Appellee.	)	

Petition to Review a Decision of the United States Tax Court

Submitted July 23, 1986**

Before: SNEED, ALARCON, and NOONAN, Cicuit Judges.

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

United States Tax Court
Washington, D.C. 20217

October 4, 1985

Julius Jonas Jodele, Petitioner,	)	
	)	Docket No.
v.	)	
	)	19185-85
Commissioner of Internal Revenue, Respondent.	)	

ORDER OF DISMISSAL AND DECISION

Upon consideration of the record herein, and for reasons appearing in the memorandum sur order of the Special Trial Judge, which is hereto attached and served herewith and which we approve and adopt, it is

ORDERED that respondent's motion to dismiss for failure to state a claim upon which relief can be granted filed on August 12, 1985, is hereby granted. It is further

ORDERED that petitioner's motion to dismiss for lack of jurisdiction, filed on September 3, 1985, is denied. It is further

ORDERED AND DECIDED that there are deficiencies in petitioner's Federal income tax and additions to tax as follows:

		Addition to Tax		
Year	Deficiency	Section 6653a(1)	Section 6653a(2)	Section 6654
1980	$6,458.68	$327.43	--	$397.50
1981	$6,462.00	$323.10	*	$495.15
1982	$8,050.00	$402.50	**	$783.74

* 50% of the interest due on $6,462.00.
** 50% of the interest due on $8,050.00.

and that damages are due from petitioner which are hereby awarded to the United States in the amount of $5,000 pursuant to section 6673, Internal Revenue Code of 1954, as amended.

Samuel B. Sterrett
Chief Judge